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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
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16 KILINA AMERICA, INC., a California
17 Corporation;

18 Plaintiff,

19 vs.

20 L J SILVER SILVER & CO., business
21 entity form Unknown;
22 COTTONFRIENDS INC, d/b/a COIN
1804, a California Corporation;
23 PHILLIP KIM, an individual; GARS
24 LEE, an individual; ROSS STORES,
25 INC., a Delaware Corporation and
26 DOES 1-10, inclusive,

27 Defendants.
28

Case Number: 2:17-cv-5426

PLAINTIFF'S COMPLAINT FOR:

- 1. COPYRIGHT INFRINGEMENT**
- 2. VICARIOUS COPYRIGHT INFRINGEMENT**
- 3. CONTRIBUTORY COPYRIGHT INFRINGEMENT**

Jury Trial Demanded

1
2 Plaintiff KILINA AMERICA, INC. (“Plaintiff” or “KILINA”) by and through its
3 undersigned attorneys, hereby prays to this honorable Court for relief and remedy
4 based on the following:

5 6 **INTRODUCTION**

7 Plaintiff is a California-based company engaged in the apparel industry as a textile
8 converter of imported and domestic fabrications. Plaintiff creates, or purchases
9 and obtains, exclusive rights to unique two-dimensional graphic artworks for use
10 on textiles and garments, and those textiles and garments are transacted primarily
11 in the fashion industry. Plaintiff owns these designs in exclusivity and makes sales
12 of products bearing these designs for profit. Plaintiff’s business is predicated on its
13 ownership of these designs and it spends a considerable amount of time and
14 resources creating and obtaining top-quality, marketable and aesthetically-
15 appealing designs. Customers of Plaintiff, including possibly DOE defendants
16 named herein, take design samples with the understanding and agreement that they
17 will only utilize Plaintiff to reproduce said designs should they wish to do so, and
18 will not seek to make minor changes to Plaintiff’s proprietary work to reproduce
19 the same elsewhere, yet use those designs in furtherance of their business in
20 violation of both their contractual agreement with Plaintiff and Plaintiff’s
21 copyrights. No other party is authorized to make sales of product bearing
22 Plaintiff’s proprietary designs without express permission from Plaintiff. This
23 action is brought to recover damages for direct, vicarious and contributory
24 copyright infringement arising out of the misappropriation of Plaintiff’s exclusive
25 designs by the Defendants, and each of them.

26 27 **JURISDICTION AND VENUE**

28

- 1 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et*
2 *seq.*
- 3 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a)
4 and (b).
- 5 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a)
6 in that this is the judicial district in which a substantial part of the acts and
7 omissions giving rise to the claims occurred.

8 **PARTIES**

- 9 4. KILINA AMERICA, INC. (“Plaintiff”) is a corporation organized and existing
10 under the laws of the State of California with its principal place of business in
11 the County of Los Angeles, at 1368 E Washington Blvd., Los Angeles, CA
12 90021.
- 13 5. Plaintiff is informed and believes and thereon alleges that Defendant L J
14 SILVER SILVER & CO. (“L J SILVER”) is, and at all times herein mentioned
15 was, a business entity organized under the laws of California and doing
16 business in California, with its principal place of business at 815 Mission St.,
17 San Francisco, CA 94103.
- 18 6. Plaintiff is informed and believes and thereon alleges that Defendant
19 COTTONFRIENDS INC, d/b/a COIN 1804, a California Corporation,
20 (“COTTONFRIENDS”) is, and at all times herein mentioned was, a corporation
21 organized and existing under the laws of California and doing business in
22 California, with its principal place of business at 2262 E. 37th St., Vernon, CA
23 90058.
- 24 7. Plaintiff is informed and believes and thereon alleges that Defendant PHILLIP
25 KIM (“KIM”) is, and at all times herein mentioned was, an individual residing
26 in Los Angeles, California. Plaintiff is informed and believes and thereon
27 alleges that Defendant KIM is, and at all times herein mentioned was, the owner
28

1 and principal of COTTONFRIENDS with its principal place of business at 2262
2 E. 37th St., Vernon, CA 90058.

3 8. Plaintiff is informed and believes and thereon alleges that Defendant GARSI
4 LEE ("LEE") is, and at all times herein mentioned was, an individual residing
5 in Los Angeles, California. Plaintiff is informed and believes and thereon
6 alleges that Defendant LEE is, and at all times herein mentioned was, the owner
7 and principal of COTTONFRIENDS with its principal place of business at 2262
8 E. 37th St., Vernon, CA 90058.

9 9. Plaintiff is informed and believes and thereon alleges that Defendant ROSS
10 STORES, INC. ("ROSS") is, and at all times herein mentioned was, a
11 corporation organized and existing under the laws of Delaware and doing
12 business in California, with its principal place of business at 5130 Hacienda
13 Drive, Dublin, CA 94568.

14 10. Named Defendants, and DOES 1-10, may be collectively referred to as
15 "Defendants."

16 11. Plaintiff is informed and believes and thereon alleges that some of Defendants
17 Does 1 through 3, inclusive, are manufacturers and/or vendors of garments to
18 Defendant, which DOE Defendants have manufactured and/or supplied and are
19 manufacturing and/or supplying garments comprised of fabric printed with
20 Plaintiff's copyrighted design(s) (as hereinafter defined) without Plaintiff's
21 knowledge or consent or have contributed to said infringement. The true
22 names, whether corporate, individual or otherwise, and capacities of defendants
23 sued herein as Does 1 through 3 are presently unknown to Plaintiff at this time,
24 and therefore, Plaintiff sues said defendants by such fictitious names. Plaintiff
25 will seek leave to amend this complaint to allege their true names and capacities
26 when the same have been ascertained. Plaintiff is informed and believes, and
27 based thereon alleges, that each of defendants designated as a DOE is
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1 responsible in some manner for the events alleged herein and the damages
2 caused thereby.

3 12. Defendants DOES 4 through 10, inclusive, are other parties not yet identified
4 who have infringed Plaintiff's copyrights, have contributed to the infringement
5 of Plaintiff's copyrights, or have engaged in one or more of the wrongful
6 practices alleged herein. The true names, whether corporate, individual or
7 otherwise, and capacities of defendants sued herein as Does 4 through 10 are
8 presently unknown to Plaintiff at this time, and therefore, Plaintiff sues said
9 defendants by such fictitious names. Plaintiff will seek leave to amend this
10 complaint to allege their true names and capacities when the same have been
11 ascertained.

12 13. Plaintiff is informed and believes and thereupon alleges that at all times
13 relevant hereto each of Defendants acted in concert with each other, was the
14 agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee
15 of the remaining defendants and was at all times acting within the scope of such
16 agency, affiliation, alter-ego relationship and/or employment; and actively
17 participated in or subsequently ratified and adopted, or both, each and all of the
18 acts or conducts alleged, with full knowledge of all the facts and circumstances,
19 including without limitation to full knowledge of each and every wrongful
20 conducts and Plaintiff's damages caused therefrom.

21 **CLAIMS RELATED TO DESIGN**

22 14. Plaintiff is the owner and author of a two-dimensional artwork called KSM-
23 62309 ("Subject Design"). (Exhibit A).

24 15. Plaintiff applied for a copyright from the United States Copyright Office for the
25 Subject Design and was granted Registration VAu 1-225-789 effective on July
26 20, 2015. (Exhibit B).

27 16. Plaintiff formatted the Subject Design for use on textiles, sampled the Subject
28 Design, and negotiated sales of fabric bearing the Subject Design.

1 17.Plaintiff is informed and believes and thereon alleges that Defendants, each of
2 them, had access to the Subject Designs, including without limitation, through:
3 (a) access to Plaintiff's showroom and/or design library; (b) access to illegally
4 distributed copies of the Subject Designs by third-party vendors and/or DOE
5 Defendants, including without limitation international and/or overseas
6 converters and printing mills; (c) access to Plaintiff's strike-offs and samples;
7 and (d) access to garments in the marketplace manufactured with lawfully
8 printed fabric bearing the Subject Designs.

9 18.Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
10 authorization, Defendant L J SILVER purchased, sold, marketed, advertised,
11 manufactured, caused to be manufactured, imported and/or distributed fabric
12 and/or garments comprised of fabric featuring a design which is identical, or
13 substantially similar to, the Subject Design. A true and correct copy of such a
14 garment is attached hereto as Exhibit C. Said garments include but are not
15 limited to garments sold by L J SILVER bearing the label "Coin 1804".

16 19.At various times Defendant L J SILVER owned and controlled offline and/or
17 online retail stores, and each, Plaintiff's investigation revealed that garments
18 comprised of fabric bearing the Subject Design were being offered for sale,
19 garments which were manufactured and/or imported under the direction of the
20 Defendants, and each of them.

21 20.Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
22 authorization, Defendant COTTONFRIENDS purchased, sold, marketed,
23 advertised, manufactured, caused to be manufactured, imported and/or
24 distributed fabric and/or garments comprised of fabric featuring a design which
25 is identical, or substantially similar to, the Subject Design. A true and correct
26 copy of such a garment is attached hereto as Exhibit C. Said garments include
27 but are not limited to garments sold by COTTONFRIENDS bearing the label
28 "Coin 1804".

1 21. At various times Defendant COTTONFRIENDS owned and controlled offline
2 and/or online retail stores, and each, Plaintiff's investigation revealed that
3 garments comprised of fabric bearing the Subject Design were being offered for
4 sale, garments which were manufactured and/or imported under the direction of
5 the Defendants, and each of them.

6 22. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
7 authorization, Defendant KIM purchased, sold, marketed, advertised,
8 manufactured, caused to be manufactured, imported and/or distributed fabric
9 and/or garments comprised of fabric featuring a design which is identical, or
10 substantially similar to, the Subject Design. A true and correct copy of such a
11 garment is attached hereto as Exhibit C. Said garments include but are not
12 limited to garments sold by COTTONFRIENDS.

13 23. At various times Defendant KIM owned and controlled offline and/or online
14 retail stores, and each, Plaintiff's investigation revealed that garments
15 comprised of fabric bearing the Subject Design were being offered for sale,
16 garments which were manufactured and/or imported under the direction of the
17 Defendants, and each of them.

18 24. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
19 authorization, Defendant LEE purchased, sold, marketed, advertised,
20 manufactured, caused to be manufactured, imported and/or distributed fabric
21 and/or garments comprised of fabric featuring a design which is identical, or
22 substantially similar to, the Subject Design. A true and correct copy of such a
23 garment is attached hereto as Exhibit C. Said garments include but are not
24 limited to garments sold by COTTONFRIENDS.

25 25. At various times Defendant LEE owned and controlled offline and/or online
26 retail stores, and each, Plaintiff's investigation revealed that garments
27 comprised of fabric bearing the Subject Design were being offered for sale,
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garments which were manufactured and/or imported under the direction of the Defendants, and each of them.

26. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization, Defendant ROSS purchased, sold, marketed, advertised, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments comprised of fabric featuring a design which is identical, or substantially similar to, the Subject Design. A true and correct copy of such a garment is attached hereto as Exhibit C. Said garments include but are not limited to garments sold by ROSS bearing the label "Coin 1804".

27. At various times Defendant ROSS owned and controlled offline and/or online retail stores, and each, Plaintiff's investigation revealed that garments comprised of fabric bearing the Subject Design were being offered for sale, garments which were manufactured and/or imported under the direction of the Defendants, and each of them.

28. None of the aforementioned transactions were authorized by Plaintiff, and all were in violation of Plaintiff's intellectual property rights.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

29. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in Paragraphs 1 through 28, inclusive, of this Complaint.

30. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, accessed the Subject Design through, without limitation, the following: (a) access to Plaintiff's design library; (b) access to authorized or unauthorized reproductions in the possession of other vendors and/or DOE Defendants; and (c) access to Plaintiff's strike-offs, swatches, paper CADs and samples.

31.Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyright by importing, creating, marketing, advertising, making, and/or developing directly infringing and/or derivative works from the Subject Design and by importing, producing, distributing and/or selling infringing garments through a nationwide network of retail stores, catalogues, and online websites.

32.Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

33.Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages to its business in an amount to be established at trial.

34.Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Design in an amount to be established at trial.

35.Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of infringement alleged herein with actual or constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

SECOND CLAIM FOR RELIEF

(For Vicarious Copyright Infringement – Against All Defendants)

36.Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in Paragraphs 1 through 35, inclusive, of this Complaint.

37.Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly induced, participated in, aided and abetted in and

1 resultantly profited from the illegal reproduction, importation, purchase,
 2 marketing, advertisement, distribution and/or sales of product featuring the
 3 Subject Design as alleged herein above.

4 38. Plaintiff is informed and believes and thereon alleges that Defendants, and each
 5 of them, are vicariously liable for the infringement alleged herein because they
 6 had the right and ability to supervise the infringing conduct and because they
 7 had a direct financial interest in the infringing product.

8 39. By reason of the Defendants', and each of their, acts of contributory and/or
 9 vicarious infringement as alleged above, Plaintiff has suffered and will continue
 10 to suffer substantial damages to its business in an amount to be established at
 11 trial, as well as additional general and special damages in an amount to be
 12 established at trial.

13 40. Due to Defendants' acts of contributory and/or vicarious copyright infringement
 14 as alleged herein, Defendants, and each of them, have obtained direct and
 15 indirect profits they would have not otherwise realized but for their
 16 infringement of the Subject Design. As such, Plaintiff is entitled to
 17 disgorgement of Defendants' profits directly and indirectly attributable to
 18 Defendants' infringement of the Subject Design, an amount to be established at
 19 trial.

20 41. Plaintiff is informed and believes and thereon alleges that Defendants, and each
 21 of them, have committed acts of infringement alleged herein with actual or
 22 constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a
 23 finding of willful infringement.

24 25 **THIRD CLAIM FOR RELIEF**

26 (Contributory Copyright Infringement– Against All Defendants)

27 42. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully
 28 set forth the allegations contained heretofore, inclusive, of this Complaint.

43. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly induced, caused, materially contributed to, participated in, encourages, aided and abetted in and resultantly profited from the illegal reproduction, importation, purchase, marketing, advertising, distribution and/or sales of product featuring the Subject Design as alleged herein above.

44. By reason of the Defendants', and each of their, acts of contributory copyright infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to established at trial, as well as additional general and special damages in an amount to be established at trial.

45. Due to Defendants' acts of contributory copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would have not otherwise realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Design, an amount to be established at trial.

46. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of infringement alleged herein with actual or constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

Against All Defendants

With respect to Each Claim for Relief:

1. That Defendants, their agents and servants be enjoined from infringing Plaintiff's copyrights in any manner;

2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum to be proven at time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;
3. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;
4. That Plaintiff be awarded pre-judgment interest as allowed by law;
5. That Plaintiff be awarded costs of litigation; and
6. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury in this action pursuant to Federal Rule of Civil Procedure 38 and the Seventh Amendment of the Constitution.

Dated: July 21, 2017

Respectfully submitted,

/s/C. Yong Jeong
C. Yong Jeong, Esq.
Scott Satkin, Esq.
John R. Baldivia, Esq.
Attorneys for Plaintiff